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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,440	12/27/2000	Wolfgang Daum	9D-HR-19572	4178
John S. Beulick Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MO 63102				
7590 06/10/2010			EXAMINER NEURAUTER, GEORGE C	
			ART UNIT 2443	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### **DETAILED ACTION**

Applicant's election with traverse of the election by original presentation in the reply filed on 28 May 2010 is acknowledged. The traversal is on the ground(s) that the newly presented claims are not directed to an invention that functions in a completely different manner than the original invention. This is not found persuasive because the claims have clearly shifted from the functions of receiving a first level authorization to access an appliance, accessing the appliance, determining if a request to perform a service diagnosis requires access to at least one superuser-level function, and requesting a second level of authorization to access the superuser-level function as shown in Figure 3 to a separate embodiment of the invention where the functions comprise receiving a request to perform a service diagnosis from an appliance communicatively coupled to other appliances through a communication bus, determining whether the appliance has obtained control of the bus, and performing a service diagnosis of the applicant if the appliance has control of the bus as shown in Figure 2. These functions are clearly separate embodiments based on the specification and are considered to be subcombinations usable together.

Note that MPEP 819 states that "The general policy of the Office is not to permit the applicant to shift to claiming another invention after an election is once made and action given on the elected subject matter." Also, 37 CFR 1.45 states that "If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be

required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in 37 CFR 1.143 and 1.144".

The requirement is still deemed proper and is therefore made FINAL.

Newly amended claims 1, 4, 7-11, 22, 27-31 and 34-37 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The original claims were directed towards receiving a first level authorization to access an appliance, accessing the appliance, determining if a request to perform a service diagnosis requires access to at least one superuser-level function, and requesting a second level of authorization to access the superuser-level function. The newly amended claims are directed towards receiving a request to perform a service diagnosis from an appliance communicatively coupled to other appliances through a communication bus, determining whether the appliance has obtained control of the bus, and performing a service diagnosis of the applicant if the appliance has control of the bus. The two inventions are thus disclosed as sub-combinations being usable together, capable of functioning independently of each other. Restriction for examination purposes is required because the newly claimed invention functions in a completely different manner than the original invention and would require a new search that was not previously required.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1, 4, 7-11, 22, 27-31 and 34-37 are

withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The amendment filed on 17 December 2009 canceling all claims drawn to the elected invention and presenting no non-elected claims for examination is non-responsive. See MPEP 821.03.

It is noted that the claims originally presented and acted upon by the Office on their merits determine the invention elected by an applicant in the application, and in any request for continued examination (RCE) which has been filed for the application. Subsequently presented claims to an invention other than that acted upon should be treated as provided in MPEP § 821.03. See MPEP 818.02(a).

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is (571)272-3918. The examiner can normally be reached on the hours between 8:30am-5:00pm Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tonia Dollinger, can be reached on 571-272-4170. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George C Neurauter, Jr./  
Primary Examiner, Art Unit 2443